

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SOL M. OPADA and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL HOSPITAL, Mather, CA

*Docket No. 99-1673; Submitted on the Record;
Issued August 10, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established that she sustained an injury in the performance of duty on November 19, 1998.

On December 9, 1998 appellant, a staff nurse, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that she sustained an injury to her right arm while in the performance of duty on November 19, 1998. She explained that while pushing a gurney she experienced pain in her right arm that radiated to her neck. Appellant further indicated that the pain became intolerable later in the day when she was on her way home. She ceased work the day following her alleged injury. Although appellant indicated that she received medical treatment for her condition and was advised to remain off work until November 30, 1998, she did not submit any supporting medical evidence with her claim.

By letter dated January 26, 1999, the Office of Workers' Compensation Programs requested that appellant submit additional factual and medical information. Appellant was further advised that the case would remain open for 21 days in order to submit the requested information. The Office did not receive the requested information within the allotted time frame.

In a decision dated February 17, 1999, the Office denied appellant's claim on the basis that she failed to establish that she sustained an injury as alleged. The Office explained that, while the evidence of file established that appellant actually experienced the claimed event, there was no medical evidence establishing that appellant suffered a diagnosed medical condition causally related to the November 19, 1998 employment incident.

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty on November 19, 1998.

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee

actually experienced the employment incident that is alleged to have occurred.¹ As previously noted, the Office accepted that appellant actually experienced the claimed employment incident of November 19, 1998. The second component is whether the employment incident caused a personal injury.² This latter component generally can be established only by medical evidence.³ In the instant case, the Office properly denied appellant's claim based on her failure to satisfy this latter component. Appellant did not initially submit any medical evidence in support of her claim nor did she respond in a timely fashion to the Office's January 26, 1999 request for information.⁴ In view of the absence of any medical evidence diagnosing a condition causally related to the November 19, 1998 employment incident, appellant has failed to establish that she sustained an injury in the performance of duty.

The February 17, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
August 10, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *Id.*

³ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁴ The record on appeal includes evidence that was not submitted to the Office prior to the issuance of its February 17, 1999 decision denying compensation. Inasmuch as the Board's review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).